

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

RICHARD VENTO, LANA VENTO, GAIL VENTO,	)	
RENEE VENTO AND NICOLE VENTO MOLLISON,	)	
	)	
	)	
Petitioners,	)	
	)	CIVIL NO. 2006/218
v,	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
	)	
Respondent and	)	
Counterclaim Petitioner,	)	
	)	
	)	
FIRSTBANK VIRGIN ISLANDS,	)	
	)	
	)	
Counterclaim Respondent.	)	
_____	)	

**MEMORANDUM OPINION AND ORDER**

This matter came before the Honorable Geoffrey W. Barnard, United States Magistrate Judge, on June 6, 2007, for oral argument on the Petitioners', Richard Vento, Lana Vento, Gail Vento, Renee Vento and Nicole Vento Mollison's, ("Petitioners" or "Ventos") Motion to Quash the Internal Revenue Service's ("IRS") third-party summons served on FirstBank Virgin Islands ("FirstBank"). At the hearing, the Petitioners were represented by Marjorie Rawls Roberts, Esq. and Joseph M. Erwin, Esq. and the United States of America was represented by Joycelyn Hewlett, Esq. and Stuart Gibson, Esq.

At the hearing, the Petitioners called two witnesses,

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Richard Moore, Ph.D., who was the Chief Economist for the Government of the Virgin Islands and Chair of the Government's Tax Council and Economic Policy Council from 1981 through 1987 and instrumental in the drafting of the Tax Implementation Agreement Between the United States of America and the Virgin Islands<sup>1</sup> and Mr. Anthony Olive, a former Director of the Virgin Islands Bureau of Internal Revenue ("VIBIR"), who was a signatory to the Tax Implementation Agreement.

#### **RELEVANT FACTS**

On November 14, 2006, the IRS served a third-party summons upon FirstBank requesting information regarding the Ventos' account with FirstBank for the tax years 2002 through 2004.<sup>2</sup> Copies of the summons were also served upon the Ventos and their attorney, Marjorie Rawls Roberts. On December 4, 2006, the Ventos filed a Petition to Quash the IRS third-party summons on FirstBank alleging that the summons was not issued in accordance

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<sup>1</sup> The Tax Implementation Agreement is an Agreement entered into between the United States of America and the Virgin Islands on February 24, 1987, providing "for the exchange of information and mutual assistance with respect to taxes in order to prevent the evasion or avoidance of United States or Virgin Islands taxes. . . ."

<sup>2</sup> The IRS is investigating whether the Ventos were "bona fide" residents of the Virgin Islands for the tax years 2002-2004; whether the Ventos were obligated to report their income on U. S. tax returns; and whether the Ventos reported the proper amounts of income earned and the source of the income during the 2002 through 2004 tax years . . . ." (U. S. Memorandum in Support of Opposition to Petition to Quash IRS Third-Party Summons and Counterclaim To Enforce Internal Revenue Summons - page 3.)

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with the criteria set forth in *Powell v. United States*, 379 U.S. 48(1964). Specifically, the Ventos allege that the summons failed to meet three of the four criteria set forth in *Powell*. Namely, (1) that the summons was not issued for a valid purpose; (2) that the summons was overbroad and has no relevance to the determination of the United States income tax liability of the Ventos; (3) that the summons was not issued pursuant to a valid delegation order which allows the IRS to investigate the income tax liability of bona fide residents of the Virgin Islands within the meaning of 932(c)(4) of the Internal Revenue Code of 1986, as amended; and (4) that the procedures of the Tax Implementation Agreement between the United States and the Virgin Islands were not followed.

On January 24, 2007, the IRS responded to the Petitioners' Petition alleging that its summons was issued in compliance with the four criteria set forth in *Powell* and, therefore, it has established a prima facie case for enforcement of the summons and that this Court should enter an Order granting its counterclaim and enforcing the summons.

#### **DISCUSSION**

The question before this Court is whether the IRS has met the criteria set forth in *Powell*. The criteria set forth in *Powell v. United States* for the issuance of a valid, are as

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follows: (1) the summons must be issued for a proper purpose, (2) the information sought must be relevant to that purpose, (3) the information must not be in the possession of the IRS and (4) that the administrative steps required by law regarding the summons and the issuance and the service of the summons must have been followed. *Powell* at 57-58.

As stated above, the Ventos allege that the IRS has not complied with requirement numbers 1, 2 and 4 of *Powell*. First, the Ventos allege that the summons was not issued for a valid purpose because for the tax years 2002 through 2004, they were bona fide residents of the Virgin Islands within the meaning of Internal Revenue Code, section 932(c)(4), and they filed tax returns with the VIBIR reporting worldwide income and paying tax thereon. Consequently, they have no additional tax liability which could be subject to investigation by the IRS; and, even if the summons was issued for a valid purpose, the information and documents sought from FirstBank have no relevance to the determination of their residency. 26 U.S.C. § 932(c)(4) provides:

In case of an individual

(A) who is a bona fide resident of the Virgin Islands during the entire taxable year,

(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the

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source of each item shown on such return, and

(C) Who fully pay his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income, for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account.

The IRS contends that it has the statutory duty and power to investigate the Ventos potential income tax liability pursuant to 26 U.S.C. § 7601<sup>3</sup> and that 26 U.S.C. § 7602<sup>4</sup> provides the means

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<sup>3</sup> Section 7601 in pertinent part provides: (a) General rule. The Secretary shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, for time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or have the care and management of any objects with respect to which any tax is imposed.

<sup>4</sup> Section 7602 in pertinent part reads:

Examination of books and witnesses.

(a) Authority to summon, etc. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized--

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

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and the manner by which the IRS may investigate the legitimacy of the Ventos claim of Virgin Islands residency and the correctness of the Ventos returns.

It should be noted that 26 U.S.C. 932 (c)(4) provides that an individual claiming to be a bona fide Virgin Islands resident must report income from all sources and identify the source of each item on the return and fully pay his tax liability to the Virgin Islands. It is this Court's position that the IRS has the power and the statutory duty pursuant to 26 U.S.C. §§ 7601 and 7602 to investigate the Ventos to determine whether they reported their income from all sources, whether they fully paid taxes with respect to that income and whether their claim to Virgin Islands residency is legitimate and that the issuance of the summons to FirstBank pursuant to 26 U.S.C. § 7602 is a legitimate means by which the IRS may obtain that type of information and, thus,

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(b) Purpose may include inquiry into offense. The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties.

(1) General notice. An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.

(2) Notice of specific contacts. The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.



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constitutes a valid purpose for the issuance of the summons.

Thirdly, the Ventos contend that the summons was not issued pursuant to a valid delegation order within the meaning of 26 U.S.C. § 932(c)(4). Title 26 U.S.C. § 932(c)(4), set forth above, does not address the issuance of the summons pursuant to delegation order. However, the USA contends that the summons was issued in accordance with the proper administrative procedures as set forth in 26 U.S.C. §§ 7603<sup>5</sup> and 7609.<sup>6</sup> In its Opposition to

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Section 6903 in pertinent part provides: (a) In General. A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2) or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) Service by mail to third-party recordkeepers.

(1) In general. A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.

(2) Third-party recordkeeper. For purposes of paragraph (1), the term "third-party recordkeeper" means--

(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A)). . . .

<sup>6</sup> Section 7609 in pertinent part reads: (a) Notice (1) In General. If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of th summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23<sup>rd</sup> day before the day fixed in the summons as the day upon which such records are to examined. Such notice shall be accompanied by a copy fo the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a

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the Petition to Quash, the USA set forth the procedure it utilized to issue the third-party summon upon FirstBank. The court is satisfied that the procedure the IRS utilized complies with the requirements of 26 U.S.C. §§ 7603 and 7609.

Finally, the Ventos contend that the summons was not issued in accordance with the *Powell* criteria because the procedures of the Tax Implementation Agreement were not followed. Specifically, the Ventos allege that the TIA requires the IRS to notify and coordinate its use of the summons with the Virgin Islands Bureau of Internal Revenue. In response, the USA contends that the IRS's power to issue summonses is preserved by the TIA, in Article 4, paragraph four and by 26 U.S.C. §7651(1).<sup>7</sup> Article four of the TIA provides for the exchange of information

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proceeding to quash the summons.

(2) Sufficiency of notice. Such notice shall be sufficient in, in or before such third day, such notice is served in the manner provided in section 7603 (relating to the service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to the notice . . . .

<sup>7</sup> 26 U.S.C. § 7651(1) provides: Except as otherwise provided in this subchapter, and except as otherwise provided in section 28(a) of the Revised Organic Act of the Virgin Islands and section 30 of the Organic Act of Guam (relating to the covering of the proceeds of certain taxes into the treasuries of the Virgin Islands or Guam, respectively)--

(1) Applicability of administrative provisions. All provisions of the laws of the United States applicable to the assessment and collection of any tax imposed by this title or of any other liability arising under this title (including penalties) shall, in respect of such tax or liability, extend to and be applicable in any possession to the United States in the same manner and to the same extent as if such possession were a State, and as if the term 'United States' when used in a geographical sense included such possession.



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"to administer and enforce the domestic laws of the Contracting Governments concerning taxes covered by the Agreement."

Specifically, Article 4, paragraph four provides:

The competent authority of the requested Government will endeavor to provide information upon request by the competent authority of the applicant Government for the administration and enforcement of the domestic laws of the Contracting Government concerning taxes. If the information available in the tax files of the requested Government is not sufficient to enable compliance with the request that Government will take necessary measures to provide the applicant Government with the information requested.

**Notwithstanding the foregoing, the United States may exercise its rights under section 7602 et seq. of the Code to obtain information in the Virgin Islands without resorting to the procedures set forth in this Agreement.** However, in the event the United States so exercises its rights within the Virgin Islands it will notify the competent authority of the Virgin Islands prior to taking action or as soon as practicable, unless the competent authorities agree to limit notification with respect to certain classes of cases.

Clearly, under the TIA, to the extent the parties have not agreed that notification of the issuance of summonses is not necessary, the IRS may exercise its statutory power to issue summonses pursuant to section 7602 provided that the IRS notifies the VIBIR prior to issuing the summons or as soon as practicable after the summons has been issued. The Ventos do not allege that the IRS failed to notify the proper party at the VIBIR prior to

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the issuance of the summons or "as soon as practicable" after the summons was issued. Consequently, the Ventos contention that the summons was not issued in accordance with the TIA fails because the Ventos have not alleged that the IRS failed to notify the VIBIR of the issuance of the summons on FirstBank.

Other courts, including this court on two prior occasions, have heard and ruled on other Vento Petitions to Quash Third-Party Summonses. The most recent ruling was issued by the Second Circuit in the case of *Mollison v. United States*, 481 F.3d 119 (2d. Cir. 2007), affirming the decision of the United States District Court for the Southern District of New York. In that case, the Ventos alleged that the summons must be quashed because (1) the IRS lacked a legitimate purpose in issuing the summons because petitioners resided in the Virgin Islands and thus, pursuant to 26 U.S.C. § 932(c), were required to file only Virgin Islands tax returns; (2) the documents sought were not relevant to the question of petitioners' residency; (3) the IRS already had the information in its possession; (4) the IRS failed to follow proper procedures in issuing the summons because it violated the Tax Implementation Agreement between the United States and the Virgin Islands; and (5) the summons violated their due process rights. *Mollison* at 121. In *Mollison*, the District Court held that the IRS had a legitimate purpose in issuing the summons

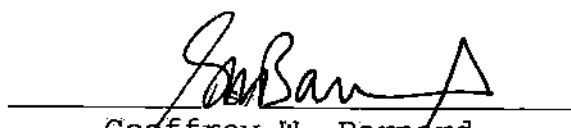
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because the IRS was investigating whether the Ventos were bona fide Virgin Islands residents in 2001, and because even if they were, the IRS retains the authority to investigate the tax liability of the Virgin Islands residents. The petitions were dismissed and the summons enforced. *Mollison* at 122.

Likewise, this Court finds that the IRS has the statutory power to issue the third-party summons on FIRSTBANK to assist in its investigation of whether the Ventos were bona fide Virgin Islands residents and to determine whether they reported the proper amounts of income earned and the sources of the income for the tax years 2002 through 2004. Further, the Court finds that the information requested in the summons is relevant to the determination of those issues and, finally, this Court finds that the IRS did not violate the TIA if it advised the VIBIR of the summons prior to its issuance or as soon as practicable after its issuance.

For the foregoing reasons, the Petitioners' Motion to Quash the Third-Party summons issued on FirstBank is **DENIED** and the United States' counterclaim to enforce the summons is **GRANTED**.

DATED: July 16, 2007

  
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Geoffrey W. Barnard  
U.S. Magistrate Judge

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**ATTEST:**

**WILFREDO F. MORALES**  
**CLERK OF THE COURT**

By: *Erica Jackson*  
*Erica* Deputy Clerk

**Copies to:**

Marjorie Rawls Roberts, Esq.  
Joseph M. Erwin, Esq.  
Joycelyn Hewlett, Esq.  
Claudette Donovan  
Lydia Trotman  
Olga Schneider  
Sharline L. Rogers, Esq.